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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/674,767	09/30/2003	Dean DellaPenna	87-07A	5481
23713 7590 11/04/2008 GREENLEE WINNER AND SULLIVAN P C 4875 PEARL EAST CIRCLE SUITE 200 BOULDER, CO 80301				
EXAMINER				
KALLIS, RUSSELL				
ART UNIT		PAPER NUMBER		
1638				
MAIL DATE		DELIVERY MODE		
11/04/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of Non-Compliant Amendment (37 CFR 1.121)

Application No.

10/674,767

Examiner

RUSSELL KALLIS

Applicant(s)

DELLAPENNA ET AL.

Art Unit

1638

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

The amendment document filed on 01 August 2008 is considered non-compliant because it has failed to meet the requirements of 37 CFR 1.121 or 1.4. In order for the amendment document to be compliant, correction of the following item(s) is required.

THE FOLLOWING MARKED (X) ITEM(S) CAUSE THE AMENDMENT DOCUMENT TO BE NON-COMPLIANT:

- ☐ 1. Amendments to the specification:
 - ☐ A. Amended paragraph(s) do not include markings.
 - ☐ B. New paragraph(s) should not be underlined.
 - ☐ C. Other _____.
- ☐ 2. Abstract:
 - ☐ A. Not presented on a separate sheet. 37 CFR 1.72.
 - ☐ B. Other _____.
- ☐ 3. Amendments to the drawings:
 - ☐ A. The drawings are not properly identified in the top margin as "Replacement Sheet," "New Sheet," or "Annotated Sheet" as required by 37 CFR 1.121(d).
 - ☐ B. The practice of submitting proposed drawing correction has been eliminated. Replacement drawings showing amended figures, without markings, in compliance with 37 CFR 1.84 are required.
 - ☐ C. Other _____.
- ☒ 4. Amendments to the claims:
 - ☐ A. A complete listing of all of the claims is not present.
 - ☐ B. The listing of claims does not include the text of all pending claims (including withdrawn claims).
 - ☐ C. Each claim has not been provided with the proper status identifier, and as such, the individual status of each claim cannot be identified. Note: the status of every claim must be indicated after its claim number by using one of the following status identifiers: (Original), (Currently amended), (Canceled), (Previously presented), (New), (Not entered), (Withdrawn) and (Withdrawn-currently amended).
 - ☐ D. The claims of this amendment paper have not been presented in ascending numerical order.
 - ☒ E. Other: See Continuation Sheet.
- ☐ 5. Other (e.g., the amendment is unsigned or not signed in accordance with 37 CFR 1.4):

For further explanation of the amendment format required by 37 CFR 1.121, see MPEP § 714.

TIME PERIODS FOR FILING A REPLY TO THIS NOTICE:

1. Applicant is given **no new time period** if the non-compliant amendment is an after-final amendment or an amendment filed after allowance. If applicant wishes to resubmit the non-compliant after-final amendment with corrections, the **entire corrected amendment** must be resubmitted.
2. Applicant is given **one month**, or thirty (30) days, whichever is longer, from the mail date of this notice to supply the correction, if the non-compliant amendment is one of the following: a preliminary amendment, a non-final amendment (including a submission for a request for continued examination (RCE) under 37 CFR 1.114), a supplemental amendment filed within a suspension period under 37 CFR 1.103(a) or (c), and an amendment filed in response to a *Quayle* action. If any of above boxes 1. to 4. are checked, the correction required is only the **corrected section** of the non-compliant amendment in compliance with 37 CFR 1.121.

Extensions of time are available under 37 CFR 1.136(a) **only** if the non-compliant amendment is a non-final amendment or an amendment filed in response to a *Quayle* action.

Failure to timely respond to this notice will result in:

Abandonment of the application if the non-compliant amendment is a non-final amendment or an amendment filed in response to a *Quayle* action; or

Non-entry of the amendment if the non-compliant amendment is a preliminary amendment or supplemental amendment.

/Russell Kallis/
Primary Examiner, Art Unit 1638

Continuation of 4(e) Other: Claim 17 has been amended to the subject matter of a non-elected group namely increased levels of alpha tocopherol, and is thus drawn to non-elected subject matter. Since all claims are dependent off of Claim 17 there is no elected material in the amendment available for examination. Claim 13 is now drawn to antisense and also recites increased gamma tocopherol or 'gamma tocopherol as the predominant tocopherol'. However, it is dependent upon a claim (Claim 17) that recites a coding sequence encoding a protein when expressed in a plant that would increase alpha tocopherol. The limitations of Claim 17 and Claim 13 are mutually exclusive because antisense does not encode a protein and the relative levels of alpha and gamma tocopherol are inconsistent since gamma tocopherol is the substrate for gamma tocopherol methyltransferase which synthesizes alpha tocopherol. In addition, the amendment filed 5/29/2007 was non-compliant yet it seems to have formed the basis for the most recent amendment filed 8/01/2008. The amendment filed 8/01/2008 (as well as that filed 5/29/2007, see claims 13,17,26,27,28,30,34) has the greek letter lambda which is not found anywhere in the last set of claims to be entered into the case on 9/30/2003 .